IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.741 OF 2003
IN
SUMMARY SUIT NO.1768 OF 2003

BOBCARDS Limited Plaintiff

versus

Arun Kumar Dalmia Defendant

Mr.Iqbal Panjwani for plaintiff
Mr.G.B.Kedia for defendant.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 13th June 2005

PC :

1. The plaintiff has filed this suit to claim a sum under the credit card facility extended to the defendant on the basis of a statement of account which is annexed to the plaint as Exhibit-B. The plaintiff claims decree in sum of Rs.4,66,09.12 Ps..

2. It is contended by Mr.Panjwani that on the basis of an application made by the defendant, the aforesaid facility was extended and the utilisation of the said facility by the defendant is duly reflected in the statement of account.

On the basis of the statement of account, correctness of which has never been challenged, Mr.Panjwani contends that the plaintiff is liable to pay the sum at the foot of the same. There is no dispute according to Shri Panjwani about entries inasmuch as the books from which the statement is extracted are maintained regularly and in the course of banking business.

3. The defendant has filed an affidavit stating that the said facility is an year to year facility. A credit card is normally issued in the month of May and renewed at the end of April of the subsequent year. It is contended that till such time the facility was utilised all payments have been made and it is only on the basis of three entries which are of the year December 2000, that a sum of Rs.1,61,401.38 Ps. is claimed along with interest in accordance with terms and conditions. However, the deponent of the affidavit states that he has not received the credit card for the period commencing from May to April 2001. This submission is found in para 3(i) of the affidavit in reply. There is no denial of this, save and except stating that the credit card was issued in 1996. The purchases that are stated to be in the name of the

defendant for the month of December 2000 based upon which the liability arises, are clearly denied not once but twice in the affidavit. Secondly it is pointed out that an officer of the plaintiff telephoned the defendant and inquired as to the utilisation of the credit card. It is contended that the matter was looked into even by the Executive Vice President and Assistant Vice President who visited the office of plaintiff and also various institutions/outlets to inquire as to whether the plaintiff and/or his representative utilised the card.

4. In my view, there was no occasion for the plaintiff to have undertaken this exercise. The assertion about the plaintiff contacting the defendant is not denied in the rejoinder. The aforesaid facts are not even pleaded in the plaint. The defendant contends that when the purchases were allegedly made in December 2000 he was not in Mumbai but out of station at New Delhi. Mr.Kedia disputes the signatures on the slips based upon which the purchases have been allegedly made. In the light of this material, it cannot be said that the defence raised by the defendant is frivolous or vexatious and not sufficient to grant leave to defend. In fact, it

is a substantial defence and ultimately the bank will have to prove the correctness of the entries in the statement of account, may be by leading oral evidence of the concerned officials as also persons who have made purchases for and on behalf of plaintiff by utilising the present credit card in question. For all these reasons defendant is entitled to unconditional leave to defend. Summons for Judgement stands disposed off in these terms. Suit transferred to the list of commercial causes with usual directions to file written statement, discovery and inspection.

(S.C.DHARMADHIKARI, J.)